



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93511]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.;

Declaration of Effectiveness of the Fingerprint Plan of the Financial Industry

Regulatory Authority, Inc.

November 2, 2021.

On October 28, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a new fingerprint plan (“Plan”)¹ pursuant to Rule 17f-2(c)² under the Securities Exchange Act of 1934 (“Exchange Act” or “Act”).³ The Plan supersedes and replaces FINRA’s current fingerprint plan, which was declared effective for the Commission by the Division of Trading and Markets, pursuant to delegated authority, on May 2, 2006 (“FINRA’s 2006 Plan”).⁴

FINRA states that it is adopting the Plan due to the age of FINRA’s current fingerprint processing platform, and the availability of more modern alternatives offered by private vendors approved by the Federal Bureau of Investigation (“FBI”) to channel fingerprints.⁵ Therefore, as discussed in more detail below, FINRA states that in order to

¹ Attached hereto as Exhibit A. See also Letter from Richard Pullano, Vice President and Associate General Counsel, FINRA, to Devin Ryan, Assistant Director, Office of Chief Counsel, Division of Trading and Markets, dated October 28, 2021 (“FINRA Letter”), available at <https://www.finra.org/sites/default/files/2021-11/fingerprint-plan.pdf>.

² 17 CFR 240.17f-2(c).

³ 15 U.S.C. 78a et seq.

⁴ See Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006) (Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc.). FINRA will continue to channel fingerprints for these personnel consistent with the 2006 Fingerprint Plan until the new fingerprinting process set forth in the Plan is fully implemented.

⁵ See FINRA Letter at 1.

continue to facilitate compliance with the fingerprinting requirement in Section 17(f)(2) of the Exchange Act, it is transitioning to a new fingerprinting process for broker-dealer personnel (of both FINRA members and other broker-dealers) and for FINRA personnel using the services of an FBI-approved channeler (“FBI-Approved Channel Partner”).⁶ FINRA will continue at this time its current role as the channeler for processing fingerprints of transfer agent and clearing agency personnel that are submitted to FINRA.⁷

For the reasons discussed below, the Commission finds that, pursuant to Rule 17f-2(c) of the Exchange Act, the Plan is not inconsistent with the public interest and the protection of investors and, therefore, declares the Plan to be effective.

1. Applicable Standard

Section 17(f)(2) of the Act provides, in pertinent part, that every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency, and national securities association (as well as others), shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such

⁶ See also infra Section 2. The FBI-Approved Channel Partner is one of a limited number of entities approved by the FBI to submit fingerprints to the FBI and receive the results on behalf of an organization using that information for authorized non-criminal justice purposes (e.g., employment suitability, licensing determinations, etc.). The FBI reviews and approves all outsourced channeling relationships consistent with its outsourcing standards and protocols. As outlined in the September 28, 2021 letter from the FBI’s National Crime Prevention and Privacy Compact Council Office (“CCO Letter”), the FBI has reviewed and conditionally granted permission to FINRA to use a specified FBI-Approved Channel Partner contingent upon FINRA filing a fingerprint plan with the Commission and the Commission declaring that fingerprint plan effective. See FINRA Letter at 2, n.4 (discussing the CCO Letter, available at <https://www.finra.org/sites/default/files/2021-11/fingerprint-plan.pdf>). The terms of the CCO Letter are incorporated by reference in the Plan. See Exhibit A at 1, n. 3.

⁷ See also infra Section 3. FINRA notes that it is seeking to identify an alternative approach that would enable transfer agents and clearing agencies to efficiently fulfill their obligations to fingerprint their personnel, but would not involve FINRA acting in a channeler role. FINRA notes that, for the last two years, transfer agent and clearing agency personnel have accounted for less than two percent of the fingerprints processed by FINRA. FINRA intends to work with the Commission, FBI and the transfer agent and clearing agency communities to identify this alternative approach. See FINRA Letter at 1.

fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing.⁸ However, in accordance with Exchange Act Rule 17f-2(c), the fingerprinting requirement of Section 17(f)(2) may be satisfied by submitting appropriate and complete fingerprint cards to, among others, a registered national securities association (such as FINRA) which, pursuant to a plan filed with and declared effective by, the Commission, forwards such fingerprint cards to the Attorney General of the United States (“Attorney General”) or its designee for identification and appropriate processing.⁹ Under Rule 17f-2(c), such fingerprinting plans—like FINRA’s 2006 Plan and this Plan—shall not become effective unless it is declared effective by the Commission, which requires the Commission to find that the plan is “not inconsistent with the public interest or the protection of investors.”¹⁰

FINRA states that the purpose of the Plan is to facilitate compliance with Section 17(f)(2) of the Act and Rule 17f-2 thereunder by providing a program for FINRA members,¹¹ other broker-dealers, transfer agents, clearing agencies and FINRA to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General.¹²

2. FINRA Members and other Broker-Dealers

Under FINRA's 2006 Plan, FINRA accepts fingerprints and identifying information from member firms and other securities industry participants required to be fingerprinted

⁸ 15 U.S.C. 78q(f)(2).

⁹ 17 CFR 240.17f-2(c).

¹⁰ See id. The Commission may also impose any terms and conditions relating to the provisions of the plan and the period of its effectiveness as it may deem necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. See id.

¹¹ For purposes of the Plan, the term “members” included Capital Acquisition Brokers, Funding Portals and applicants for FINRA membership.

¹² See Exhibit A.

under Rule 17f-2.¹³ FINRA then transmits these fingerprints and identifying information to the FBI, which the Attorney General has designated to identify and process such fingerprints, consistent with protocols and requirements established by the Attorney General.¹⁴ However, as set forth in the Plan, FINRA is partnering with an FBI-Approved Channel Partner to process fingerprints and other identifying information from personnel of FINRA members and other broker-dealers required to be fingerprinted pursuant to Section 17(f)(2).¹⁵ Under the Plan, FINRA members or other broker-dealers will work with the FBI-Approved Channel Partner to fingerprint such personnel or accept fingerprints from such personnel (either in electronic or hard copy format), and the FBI-Approved Channel Partner will submit such fingerprints to the Attorney General for processing consistent with the protocols and requirements established by the Attorney General.¹⁶ The FBI-Approved Channel Partner will offer state-of-the-art fingerprint services to broker-dealers that include collecting fingerprints at locations nationwide and leasing fingerprint equipment to broker-dealers that wish to fingerprint personnel in-house.¹⁷

Also under the terms of the Plan, at least the following three key aspects of FINRA's 2006 Plan will remain unchanged.¹⁸ First, FINRA will continue to receive results after the fingerprints have been processed by the Attorney General and FINRA will continue to make those results available to authorized recipients (i.e., to a member or other

¹³ See FINRA Letter at 1, n. 2. FINRA's current platform uses a customized application that include software licensed from a vendor, and specialized equipment (to scan, digitize and transmit fingerprints in accordance with FBI requirements). The vendor has discontinued the software used in the customized application and ceased providing support for it in July 2021. As a result, the customized application, while still fully operational, is currently supported only by FINRA technology resources. See *id.* at 1.

¹⁴ See *supra* note 4, 71 FR at 27299-300.

¹⁵ See Exhibit A at 1.

¹⁶ See *id.*

¹⁷ See FINRA Letter at 2.

¹⁸ See *id.* at 2-3. See also Exhibit A at 2.

broker-dealer that submitted the fingerprints and to regulators, as appropriate, for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by the Attorney General.¹⁹ Second, members and other broker-dealers will continue to be able to view the status and results of the processed fingerprints, including any relevant criminal history information, through FINRA systems.²⁰ Third, FINRA will continue to review the fingerprint results to fulfill its regulatory responsibilities, store those results in the CRD or FPRD systems and make them available to other regulators that are authorized to view the results.²¹

3. Transfer Agents and Clearing Agencies

Under the Plan, FINRA, rather than the FBI-Approved Channel Partner discussed above, will continue to use its current fingerprint processing platform to accept fingerprints and identifying information from transfer agent and clearing agency personnel who are required to be fingerprinted pursuant to Rule 17f-2 and who submit fingerprints to FINRA for processing.²² FINRA will also continue to transmit fingerprints from such personnel to the Attorney General for identification and processing consistent with protocols and requirements established by the Attorney General.²³

4. FINRA Personnel

¹⁹ See Exhibit A at 2.

²⁰ These systems include the Central Registration Depository (“CRD”) and the Funding Portal Registration Depository (“FPRD”). See Exhibit A at 2.

²¹ FINRA explains that it reviews fingerprint results to ensure that applicants for registration have reported appropriately information responsive to the questions on Form U4 (the Uniform Application for Securities Industry Registration or Transfer) relating to criminal history and to identify whether any broker-dealer personnel required to be fingerprinted is subject to a statutory disqualification under the Exchange Act based upon a criminal conviction. See FINRA Letter at 3.

²² See FINRA Letter at 3.

²³ FINRA also explains that, because transfer agents and clearing agencies do not use the CRD system for registration purposes, FINRA is unable to disseminate the fingerprint statuses and results through that system (as it does for broker-dealer personnel). See FINRA Letter at 3.

The FBI-Approved Channel Partner will also process fingerprints and identifying information from FINRA personnel who are required to be fingerprinted under Section 17(f)(2) of the Act and consistent with its Policy to Conduct Fingerprint-Based Background Checks (“Fingerprint Policy”).²⁴ The FBI-Approved Channel Partner will also transmit these fingerprints and identifying information to the Attorney General for identification and processing consistent with protocols and requirements established by the Attorney General and securely make the results available to FINRA after the fingerprints have been processed.²⁵ FINRA will evaluate such results and take any appropriate action in accordance with the terms of its Fingerprint Policy.²⁶

5. Commission’s Declaration of Effectiveness of the Plan

In accordance with Rule 17f-2(c) of the Act, the Commission has reviewed the procedures detailed in the Plan and believes that the Plan is not inconsistent with the public interest and the protection of investors.

The Commission observes that most of FINRA’s 2006 Plan, which the Commission found previously to be consistent with the public interest and the protection of investors,²⁷ will remain largely unchanged.²⁸ As a result, the Commission has no reason to revisit its

²⁴ Securities Exchange Act Release No. 50157 (August 5, 2004), 69 FR 49924 (August 12, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2004-095). See Exhibit A at 3.

²⁵ See id.

²⁶ See id.

²⁷ See supra note 4 and accompanying text.

²⁸ For example, and as discussed above in section 2, at least three key aspects of FINRA’s 2006 Plan will remain unchanged for FINRA members and other broker-dealers. See supra note 18 and accompanying text. FINRA also states that its customized application for processing fingerprints will remain fully operational, although it will be supported only by FINRA technology resources. See FINRA Letter at 1, n. 1. With respect to transfer agent and clearing agent personnel, the Plan simply memorializes FINRA’s existing procedures for processing fingerprints and other identifying information for these personnel who are required to be fingerprinted pursuant to Section 17(f)(2). See id. at 3-4.

prior finding with respect to those unchanged provisions.

With respect to FINRA's decision to partner with a new FBI-Approved Channel Partner²⁹ to be the central point of intake and to process fingerprints and identifying information from its members, other broker-dealers and FINRA personnel, rather than doing so itself, the Commission observes the following representations made by FINRA. FINRA states that the FBI-Approved Channel Partner will offer state-of-the-art fingerprint services that include collecting fingerprints at locations nationwide and leasing fingerprint equipment to broker-dealers that wish to print personnel in-house.³⁰ Notably, FINRA believes that the partnership with the FBI-Approved Channel Partner will enable FINRA to continue to reliably facilitate fingerprinting of the personnel of broker-dealers as required under Section 17(f)(2) of the Exchange Act.³¹ FINRA also believes this partnership will enable FINRA to continue to fulfill its critical regulatory and investor protection responsibilities, including the identification of broker-dealer personnel required to be fingerprinted who may be subject to a statutory disqualification based on a criminal conviction.³² Similarly, FINRA states that the partnership will enable it to continue to fulfill its Exchange Act requirement to perform fingerprint-based background checks on covered FINRA personnel.³³

²⁹ See supra note 6 (discussing the FBI's conditional approval of FINRA using a specified FBI-Approved Channel Partner). See also Exhibit A at 1, n. 3.

³⁰ See FINRA Letter at 2.

³¹ See id. at 4.

³² See id.

³³ See id.

The Commission agrees with FINRA that these statutorily-mandated fingerprint-based background checks—whether performed by FINRA itself under the 2006 Plan or by an FBI-Approved Channel Partner under this Plan—will continue to help protect investors and serve the public interest. Based on the foregoing, the Commission finds that, pursuant to Rule 17f-2(c) of the Exchange Act, the Plan is not inconsistent with the public interest and the protection of investors and, therefore, declares the Plan to be effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,

Assistant Secretary.

Exhibit A

Financial Industry Regulatory Authority; Fingerprint Plan

³⁴ 17 CFR 200.30-3(a)(17)(iii).

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this fingerprint plan (“Plan”) pursuant to Rule 17f-2(c) under the Securities Exchange Act of 1934 (“Exchange Act”). This Plan supersedes and replaces FINRA’s current fingerprint plan, which was declared effective by the Securities and Exchange Commission (“Commission”) on May 2, 2006 (the “2006 Fingerprint Plan”).³⁵

The purpose of this Plan is to facilitate compliance with Section 17(f)(2) of the Exchange Act by providing a program for FINRA members,³⁶ other broker-dealers, transfer agents, clearing agencies, and FINRA to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or its designee (hereinafter “Attorney General”).

1. Members and other Broker-Dealers

FINRA is partnering with an FBI-approved private channeler (“FBI-Approved Channel Partner”)³⁷ to process fingerprints and identifying information from personnel of

³⁵ Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006) (Declaration of Effectiveness of the Fingerprint Plan of the National Association of Securities Dealers, Inc.). Pursuant to the 2006 Fingerprint Plan, FINRA channels fingerprints for, among others, FINRA members, other broker-dealers and FINRA personnel. FINRA will continue to channel fingerprints for these personnel consistent with the 2006 Fingerprint Plan until the new fingerprinting process set forth in the Plan is fully implemented.

³⁶ For purposes of the Plan, the term “members” includes Capital Acquisition Brokers, Funding Portals and applicants for FINRA membership.

³⁷ The FBI-Approved Channel Partner is one of a limited number of entities approved by the FBI to submit fingerprints to the FBI and receive the results on behalf of an organization using that information for authorized non-criminal justice purposes (e.g., employment suitability, licensing determinations, etc.). The FBI reviews and approves all outsourced channeling relationships consistent with its outsourcing standards and protocols. As outlined in the September 28, 2021 letter from the FBI’s National Crime Prevention and Privacy Compact Council Office (“CCO Letter”), the FBI has reviewed and conditionally granted permission to FINRA to use a specified FBI-Approved Channel Partner contingent upon FINRA filing a fingerprint plan with the Commission and the Commission declaring that fingerprint plan effective. See CCO Letter, available at <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints>. The terms of the CCO Letter are incorporated by reference in the Plan.

members and other broker-dealers required to be fingerprinted pursuant to Exchange Act Section 17(f)(2) and Rule 17f-2 thereunder. The FBI-Approved Channel Partner fingerprints such personnel or accepts fingerprints of such personnel (either in electronic or hard copy format) and submits such fingerprints to the Attorney General for processing consistent with protocols and requirements established by the Attorney General.³⁸

FINRA receives results from the FBI-Approved Channel Partner after the fingerprints have been processed by the Attorney General and makes those results available to authorized recipients (i.e., to a member or other broker-dealer that submitted the fingerprints and to regulators, as appropriate, for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by the Attorney General. With respect to members and other broker-dealers, FINRA also reviews any Criminal History Record Information returned by the Attorney General to identify persons who may be subject to statutory disqualification under the Exchange Act and to take action, as appropriate, with respect to such persons.

FINRA maintains copies of fingerprint processing results received from the Attorney General with respect to fingerprints submitted by the FBI-Approved Channel Partner pursuant to this Plan in accordance with FINRA's records policy.³⁹ Any maintenance of fingerprint records by FINRA shall be for FINRA's own administrative purposes; FINRA is not undertaking to maintain fingerprint records on behalf of FINRA members pursuant to Exchange Act Rule 17f-2(d)(2). FINRA records in FINRA systems the status of fingerprints of personnel of members and other broker-dealers submitted to the Attorney General.⁴⁰ Through these systems, FINRA makes available to a member or other

³⁸ On its website, FINRA informs its members and other broker-dealers of the availability of fingerprint services and any fees charged by FINRA in connection with those services and the processing of fingerprints pursuant to this Plan. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints>.

³⁹ FINRA's records policy is to maintain all records for at least five years.

⁴⁰ These systems include the Central Registration Depository (CRD®) and the Funding

broker-dealer that has submitted fingerprints the status and results of such fingerprints after submission to the Attorney General.

2. Transfer Agents and Clearing Agencies

FINRA accepts fingerprints and identifying information from transfer agent personnel and clearing agency personnel who are required to be fingerprinted pursuant to Exchange Act Section 17(f)(2) and Rule 17f-2 thereunder. FINRA accepts fingerprints of such personnel in hard copy format and transmits fingerprints to the Attorney General for identification and processing consistent with protocols and requirements established by the Attorney General.⁴¹ After receiving the processed results, FINRA transmits them to the submitting transfer agent or clearing agency (i.e., an authorized recipient of the results). FINRA informs transfer agents and clearing agencies of its fingerprint processing services and the fees associated with those services.

3. FINRA Personnel

FINRA partners with the FBI-Approved Channel Partner to obtain fingerprints and identifying information from FINRA personnel who are required to be fingerprinted under Exchange Act Section 17(f)(2) and consistent with its Policy to Conduct Fingerprint-Based Background Checks (“Fingerprint Policy”).⁴² The FBI-Approved Channel Partner transmits fingerprints to the Attorney General for identification and processing consistent with protocols and requirements established by the Attorney General and securely makes the results available to FINRA after the fingerprints have been processed. FINRA evaluates the fingerprint results and takes any appropriate action in accordance with the terms of the

Portal Registration Depository (FPRD®).

⁴¹ FINRA is channeling transfer agent and clearing agency fingerprints and not using the FBI-Approved Channel Partner for this purpose.

⁴² Securities Exchange Act Release No. 50157 (August 5, 2004), 69 FR 49924 (August 12, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2004-095).

Fingerprint Policy.

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